REMARKS

By this Amendment, claims 1-3, 6-8, and 13-19 are amended and claims 4 and 10 are canceled without prejudice or disclaimer to the subject matter therein. Claims 1 and 7 are amended to positively recite the features of claims 4 and 10, respectively. Claims 2-3, 6, 8 and 13-19 are amended to correct minor informalities. No new matter is added. After entry of this Amendment, claims 1-3, 5-9 and 11-22 will remain pending in the patent application. Reconsideration and allowance of the present patent application based on the foregoing amendments and following remarks are respectfully requested.

In the Office Action, claim 5 was objected to. In connection with this objection, the Examiner indicated that the recitation "informing the terminal device to execute the download of an application required for receiving the service when the holder is judged to have no right to receive the services as a result of the above checking" should be changed to "informing the terminal device to execute the download of an application required for receiving the service when the holder is judged to have right to receive the services as a result of the above checking." (Emphasis added). Applicants respectfully disagree and submit that the wording of the recitation in claim 5 is correct and is consistent with the disclosure as filed. Support for this recitation may be found, for example, in FIGS. 20 and 26, and on page 18, lines 10-24, page 19, lines 12-19, and page 28, lines 15-20.

Accordingly, reconsideration and withdrawal of the objection to claim 5 are respectfully requested.

Claims 1, 5, 7 and 11 were rejected under 35 U.S.C. §102(e) based on Ohki *et al.* (U.S. Pat. No. 6,644,553) (hereinafter "Ohki"). The rejection is respectfully traversed.

Claim 1 is patentable over Ohki at least because this claim recites a service providing method comprising, *inter alia*, judging whether the set portable electronic device is the first portable electronic device or a second portable electronic device differing from the first portable electronic device when a data showing the setting completion of the portable electronic device to which an application is downloaded is received; and creating data relative to the individual data stored in the first portable electronic device and directing to store this relative data in the second portable electronic device when the set portable electronic device is judged to be the second portable electronic device in said judging; wherein when the set portable electronic device is judged to be the first portable electronic

device in said judging or when the data showing the completion of storage of relative data in the second portable electronic device is received, reading out application data desired by a holder from the memory. Ohki does not disclose, teach or suggest these features. Therefore, Ohki does not disclose, teach or suggest each and every feature recited by claim 1 and, as a result, cannot anticipate claim 1.

Ohki discloses an IC card terminal comprising a memory for storing an IC card terminal application corresponding to the IC card application stored in an IC card, a CPU for executing the IC card terminal application, and an I/O connectable to an outside network. (*See* col. 2, lines 9-13). Ohki discloses that when the IC card is mounted to the terminal, the IC card is authenticated, and if the IC card holder is the legitimate user, the application is installed on the IC card. (*See* col. 5, lines 24-31 and col. 6, lines 34-43). Ohki also discloses that when the capacity of the IC card is insufficient, the user is warned against it and the process is terminated. (*See* col. 8, lines 22-30). Ohki is, however, silent about judging whether the set portable electronic device is the first portable electronic device or a second portable electronic device differing from the first portable electronic device when a data showing the setting completion of the portable electronic device to which an application is downloaded is received. Furthermore, Ohki is silent about creating data relative to the individual data stored in the first portable electronic device and directing to store this relative data in the second portable electronic device when the set portable electronic device is judged to be the second portable electronic device in said judging and wherein when the set portable electronic device is judged to be the first portable electronic device in said judging or when the data showing the completion of storage of relative data in the second portable electronic device is received, reading out application data desired by a holder from the memory. In Ohki, when the capacity of the IC card is insufficient, the process is terminated "without executing anything." (*See* col. 8, lines 25-30). Therefore, as pointed out above, Ohki cannot anticipate claim 1.

Claim 5 is patentable over Ohki at least by virtue of its dependency from claim 1 and for the additional features recited therein. For example, Ohki is silent about providing service data desired by a holder when the holder is judged to have the right to receive the services as a result of the above checking; and informing the terminal device to execute the download of an application required for receiving the service when the holder is judged to have no right to receive the services as a result of the above checking. Ohki teaches that when the authentication process of the IC card fails, the process ends. (*See* FIG. 13 and col. 5, lines

30-45). Therefore, in Ohki, the terminal device does not execute the download of an application required for receiving the service when the holder is judged to have no right to receive the services as a result of the above checking. For at least this reason, claim 5 is patentable over Ohki.

Claim 7 is patentable over Ohki for similar reasons as provided in claim 1. Namely, claim 7 is patentable over Ohki at least because this claim recites a service providing system comprising, *inter alia*, means for judging whether the set portable electronic device is the first portable electronic device or a second portable electronic device differing from the first electronic device when the data showing the completion of the setting of a portable electronic device to download application is received by the receiving means; and means for creating information relative to the individual data stored in the first portable electronic device and directing storage of this relative data in the second portable device is judged by the judging means as the second portable electronic device; wherein the reading of an application desired by a holder from the memory is executed when the set portable electronic device is judged by the judging means to be the first portable electronic device or when the data showing the completion of the storage of relative data in the second portable electronic device is received by the receiving means. As mentioned previously, Ohki does not disclose, teach or suggest these features. Therefore, Ohki cannot anticipate claim 7.

Claim 11 is patentable over Ohki at least by virtue of its dependency from claim 7 and for the additional features recited therein. For example, Ohki is silent about a means for providing service data desired by the holder of the portable electronic device when the holder is judged to have the right to receive services by the holder checking means; and a means for advising the holder of the portable electronic device to download an application required for receiving the service when the holder is judged to have no right to receive the services checked by the checking means. As mentioned previously in the discussion related to claim 5, Ohki teaches that when the authentication process of the IC card fails, the process ends. For at least this reason, claim 11 is patentable over Ohki.

Accordingly, reconsideration and withdrawal of the rejection of claims 1, 5, 7 and 11 under 35 U.S.C. §102(e) based on Ohki are respectfully requested.

Claims 13, 16, 17-18 and 21-22 were rejected under 35 U.S.C. §102(e) based on Challener *et al.* (U.S. Pat. No. 6,081,793) (hereinafter "Challener"). The rejection is respectfully traversed.

Claim 13 is patentable over Challener at least because this claim recites a service providing method comprising, *inter alia*, "checking justifiability of the portable electronic device based on the data stored in the portable electronic device when the download direction is received from the terminal device." Challener does not disclose, teach or suggest a method including this feature. Therefore, Challener does not disclose, teach or suggest each and every feature recited by claim 13 and, as a result, cannot anticipate claim 13.

Challener discloses a method and system for electronic voting. Challener discloses that the voting process begins by inserting a smart card in a card reader which is in communication with a data processing system under the control of the voter. Challener also discloses that the voter enters his pin number and the data processing system compares the pin number entered by the voter to the pin number read utilizing the smart card reader to determine whether the voter is authorized to vote. (*See* col. 7, lines 40-50). Therefore, Challener merely discloses determining/judging whether the card holder is entitled to vote based on the information/pin number provided by the card holder and the smart card. In other words, Challener discloses comparing information contained in the smart card with information provided by the voter. Challener is silent about checking justifiability of the portable electronic device based on the data stored in the portable electronic device when the download direction is received from the terminal device. In claim 13, if the portable electronic device is not deemed justifiable, the method does not proceed to judge whether the holder has the right to vote from the data stored in the portable electronic device. Therefore, for at least this reason, claim 13 is patentable over Challener.

Claims 16 and 17 are patentable over Challener at least by virtue of their dependency from claim 13, and for the additional features recited therein. For example, Challener is silent about directing an invalidation of the application relative to the vote downloaded in the portable electronic device by changing it to an unusable state when the acceptance of the data relative to the vote is completed in said accepting. Challener merely discloses subtracting the content of a ballot from the vote count when the vote is fraudulent. (*See* col. 9, lines 1-25). For at least this reason, Challener cannot anticipate claim 17.

Claim 18 is patentable over Challener for at least similar reasons as provided in claim 13 and for the additional features recited therein. Namely, claim 18 is patentable over Challener at least because this claim recites a service providing system comprising, *inter alia*, "means for checking justifiability of the portable electronic device based on the data stored in

the portable electronic device received by the receiving means when the directive data for the download is received by the receiving means." As mentioned previously, Challener does not disclose, teach or suggest this feature. Therefore, Challener cannot anticipate claim 18.

Claims 21 and 22 are patentable over Challener at least by virtue of their dependency from claim 18, and for the additional features recited therein.

Accordingly, reconsideration and withdrawal of the rejection of claims 13, 16, 17-18 and 21-22 under 35 U.S.C. §102(e) based on Challener are respectfully requested.

Claims 3-4 and 9-10 were rejected under 35 U.S.C. §103(a) based on Ohki in view of the Official Notice. The rejection is respectfully traversed.

Claims 4 and 10 are canceled without prejudice or disclaimer, thus rendering moot the rejection of this claim.

Claim 3 is patentable over Ohki at least by virtue of its dependency from claim 1 and for the additional features recited therein. Namely, claim 3 is patentable over Ohki at least because this claim recites a service providing method comprising, *inter alia*, judging whether the set portable electronic device is the first portable electronic device or a second portable electronic device differing from the first portable electronic device when a data showing the setting completion of the portable electronic device to which an application is downloaded is received; and creating data relative to the individual data stored in the first portable electronic device and directing to store this relative data in the second portable electronic device when the set portable electronic device is judged to be the second portable electronic device in said judging; wherein when the set portable electronic device is judged to be the first portable electronic device in said judging or when the data showing the completion of storage of relative data in the second portable electronic device is received, reading out application data desired by a holder from the memory. Applicants respectfully submit that Ohki teaches away from these features. Indeed, Ohki clearly teaches that "in the case where the capacity is insufficient, the user is warned against it ... and terminates the process without executing anything." (*See* col. 8, lines 26-28, emphasis added). Therefore, by virtue of specifically teaching terminating the process without executing anything when the capacity of the card is insufficient, Ohki teaches away from, *e.g.*, creating data relative to the individual data stored in the first portable electronic device and directing to store this relative data in the second portable electronic device when the set portable electronic device is judged to be the second portable electronic device in said judging. (*See* MPEP 2145(X-D)). Because Ohki clearly

teaches away from the features recited in claim 3, this claim cannot be rendered obvious in view of Ohki. For at least this reason, claim 3 is patentable over Ohki.

With respect to the Official Notice taken by the Examiner, Applicants submit that an Official Notice unsupported by documentary evidence should only be taken by the Examiner where the facts asserted to be well known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well known. (*See* M.P.E.P. 2136.03, emphasis added). In addition, it is respectfully submitted that general conclusions concerning what is "basic knowledge" or "common sense" to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings cannot support an obviousness rejection. Id. It is respectfully submitted that the Examiner has failed to provide some concrete evidence to support his finding. Therefore, it is respectfully submitted that the taking of Official Notice is improper.

Claim 9 is patentable over Ohki at least by virtue of its dependency from claim 7 and for the additional features recited therein. Namely, claim 9 is patentable over Ohki at least because this claim recites a service providing system comprising, *inter alia*, means for judging whether the set portable electronic device is the first portable electronic device or a second portable electronic device differing from the first electronic device when the data showing the completion of the setting of a portable electronic device to download application is received by the receiving means; and means for creating information relative to the individual data stored in the first portable electronic device and directing storage of this relative data in the second portable device is judged by the judging means as the second portable electronic device; wherein the reading of an application desired by a holder from the memory is executed when the set portable electronic device is judged by the judging means to be the first portable electronic device or when the data showing the completion of the storage of relative data in the second portable electronic device is received by the receiving means. For similar reasons as provided in claim 3, Ohki teaches away from these features. Therefore, claim 9 cannot be rendered obvious of Ohki.

Accordingly, reconsideration and withdrawal of the rejection of claims 3 and 9 under 35 U.S.C. §103(a) based on Ohki in view of the Official Notice are respectfully requested.

Claims 15 and 20 were rejected under 35 U.S.C. §103(a) based on Challener in view of the Official Notice. The rejection is respectfully traversed.

Claim 15 is patentable over Challener at least by virtue of its dependency from claim 13 and for the additional features recited therein. Namely, claim 15 is patentable over Challener at least because this claim recites a service providing method comprising, *inter alia*, "checking justifiability of the portable electronic device based on the data stored in the portable electronic device when the download direction is received from the terminal device." This feature is not rendered obvious in view of Challener or the Official Notice. As mentioned previously Challener merely discloses comparing information contained in the smart card with information provided by the voter. However, Challener provides no motivation or suggestion about checking justifiability of the portable electronic device based on the data stored in the portable electronic device when the download direction is received from the terminal device. Applicants respectfully submit that Challener teaches away from this feature since Challener clearly discloses that, "in accordance with the preferred embodiment of the present invention, voters 205, 207, 209, 211 are each issued an individual smart card which is utilized during voting in accordance with the preferred embodiment of the invention." (*See* col. 3, lines 2-8, emphasis added). Therefore, in Challener, the smart cards used in the process described in FIG. 7 are assumed to be the smart card issued to the voters. Therefore, by teaching that each voter places his issued smart card in the cart reader, Challener teaches away from checking justifiability of the portable electronic device based on the data stored in the portable electronic device when the download direction is received from the terminal device, as in claim 15. Applicants respectfully note that, in claim 15, if the portable electronic device is not deemed justifiable, the method does not proceed to judge whether the holder has the right to vote from the data stored in the portable electronic device. Therefore, for at least this reason, claim 15 cannot be rendered obvious in view of the teachings of Challener or the Official Notice. (*See* MPEP 2145(X-D)).

Furthermore, Challener teaches away from the additional features recited in claim 15. Namely, Challener teaches away from "creating data relative to the individual data stored in the first portable electronic device, transmitting this relative data and directing to store it in the second portable electronic device when the set portable electronic device is judged as being the second portable electronic device as a result of the judgment." Challener clearly teaches that each voter is issued an "individual smart card" that includes the voter identification, the public key, the private key.... (*See* col. 3, lines 2-28). Therefore, by virtue of specifically teaching that each voter is assigned an individual smart card, Challener teaches

away from the possibility of issuing a second smart card or using a second smart card during the voting process.

In addition, it is respectfully submitted that transmitting data to a second portable device during the voting process, as suggested by the Office Action, would clearly contradict the intended purpose of enhancing privacy and security of the voting system and preventing fraudulent votes as disclosed by Challener in col. 1, lines 60-67 and col. 2, lines 1-10. For at least these reasons, claim 15 cannot be rendered obvious in view of Challener and the Official Notice.

Claim 20 is patentable over Challener or the Official Notice at least by virtue of its dependency from claim 18 and for the additional features recited therein. Namely, claim 20 is patentable over Challener at least because this claim recites a service providing system comprising, *inter alia*, "means for checking justifiability of the portable electronic device based on the data stored in the portable electronic device received by the receiving means when the directive data for the download is received by the receiving means." This feature is not rendered obvious in view of Challener or the Official Notice for at least similar reasons as provided in claim 15. Furthermore, there is no motivation or suggestion in Challener or the Official Notice to provide the additional features recited in claim 20 for at least similar reasons provided in claim 15.

Accordingly, reconsideration and withdrawal of the rejection of claims 15 and 20 under 35 U.S.C. §103(a) based on Challener in view of the Official Notice are respectfully requested.

Claims 14 and 19 were rejected under 35 U.S.C. §103(a) based on Challener. The rejection is respectfully traversed.

Claim 14 is patentable over Challener at least by virtue of its dependency from claim 13 and for the additional features recited therein. Namely, claim 14 is patentable over Challener at least because this claim recites a service providing method comprising, *inter alia*, "checking justifiability of the portable electronic device based on the data stored in the portable electronic device when the download direction is received from the terminal device." As mentioned previously in the discussion related to claim 15, Challener teaches away from such a feature. Therefore, claim 14 cannot be rendered obvious in view of Challener.

Claim 19 is patentable over Challener at least by virtue of its dependency from claim 18 and for the additional features recited therein. Namely, claim 19 is patentable over Challener at least because this claim recites a service providing system comprising, *inter alia*, "means for checking justifiability of the portable electronic device based on the data stored in the portable electronic device received by the receiving means when the directive data for the download is received by the receiving means." As mentioned previously in the discussion related to claims 15 and 20, Challener teaches away from such a feature. Therefore, claim 19 cannot be rendered obvious in view of Challener.

Accordingly, reconsideration and withdrawal of the rejection of claims 14 and 19 under 35 U.S.C. §103(a) based on Challener are respectfully requested.

Claims 2 and 8 were rejected under 35 U.S.C. §103(a) based on Ohki in view of Narasimhan *et al.* (U.S. Pat. No. 6,446,192) (hereinafter "Narasimhan"). The rejection is respectfully traversed.

Claim 2 is patentable over Ohki at least by virtue of its dependency from claim 1, and for the additional features recited therein. Namely, claim 2 is patentable over Ohki at least because this claim recites a service providing method comprising, *inter alia*, judging whether the set portable electronic device is the first portable electronic device or a second portable electronic device differing from the first portable electronic device when a data showing the setting completion of the portable electronic device to which an application is downloaded is received; and creating data relative to the individual data stored in the first portable electronic device and directing to store this relative data in the second portable electronic device when the set portable electronic device is judged to be the second portable electronic device in said judging; wherein when the set portable electronic device is judged to be the first portable electronic device in said judging or when the data showing the completion of storage of relative data in the second portable electronic device is received, reading out application data desired by a holder from the memory. As mentioned previously in the discussion related to claim 3, Applicants respectfully submit that Ohki teaches away from these features.

Narasimhan does not remedy the deficiencies of Ohki. Narasimhan merely discloses a method and apparatus for remotely controlling and monitoring devices or equipment over a computer network. However, Narasimhan is silent about the above mentioned features of claim 2. It is noted that Narasimhan was merely cited as allegedly disclosing transmitting the

read out application data in the unusable state. Therefore, the combination of Ohki and Narasimhan cannot result in any way in the invention of claim 2.

Claim 8 is patentable over Ohki at least by virtue of its dependency from claim 7, and for the additional features recited therein. Namely, claim 8 is patentable over Ohki at least because this claim recites a service providing system comprising, *inter alia*, means for judging whether the set portable electronic device is the first portable electronic device or a second portable electronic device differing from the first electronic device when the data showing the completion of the setting of a portable electronic device to download application is received by the receiving means; and means for creating information relative to the individual data stored in the first portable electronic device and directing storage of this relative data in the second portable device is judged by the judging means as the second portable electronic device; wherein the reading of an application desired by a holder from the memory is executed when the set portable electronic device is judged by the judging means to be the first portable electronic device or when the data showing the completion of the storage of relative data in the second portable electronic device is received by the receiving means. As mentioned previously in the discussion related to claim 9, Ohki teaches away from this feature.

Narasimhan does not remedy the deficiencies of Ohki for at least similar reasons as provided above in claim 2. Therefore, the combination of Ohki and Narasimhan cannot result in any way in the invention of claim 8.

Accordingly, reconsideration and withdrawal of the rejection of claims 2 and 8 under 35 U.S.C. §103(a) based on Ohki in view of Narasimhan are respectfully requested.

Claims 6 and 12 were rejected under 35 U.S.C. §103(a) based on Ohki in view of Yoneta *et al.* (U.S. Pat. No. 6,359,699) (hereinafter "Yoneta"). The rejection is respectfully traversed.

Claim 6 is patentable over Ohki at least by virtue of its dependency from claim 5, and for the additional features recited therein. Namely, claim 6 is patentable over Ohki at least because this claim recites a service providing method comprising, *inter alia*, judging whether the set portable electronic device is the first portable electronic device or a second portable electronic device differing from the first portable electronic device when a data showing the setting completion of the portable electronic device to which an application is downloaded is received; and creating data relative to the individual data stored in the first portable electronic

device and directing to store this relative data in the second portable electronic device when the set portable electronic device is judged to be the second portable electronic device in said judging; wherein when the set portable electronic device is judged to be the first portable electronic device in said judging or when the data showing the completion of storage of relative data in the second portable electronic device is received, reading out application data desired by a holder from the memory. As mentioned previously in the discussion related to claim 3, Applicants respectfully submit that Ohki teaches away from these features.

Yoneta does not remedy the deficiencies of claim 6. Yoneta was merely cited for the purpose of allegedly disclosing presenting desired services to the member in the first form to provide service data at the first price indefinitely and the second form to provide service data at prices lower than the first price for a limited period. However, Yoneta is silent about the above mentioned features. Therefore, any reasonable combination of Ohki and Yoneta cannot result in any way in the invention of claim 6.

Claim 12 is patentable over Ohki at least by virtue of its dependency from claim 7, and for the additional features recited therein. Namely, claim 12 is patentable over Ohki at least because this claim recites a service providing system comprising, *inter alia*, means for judging whether the set portable electronic device is the first portable electronic device or a second portable electronic device differing from the first electronic device when the data showing the completion of the setting of a portable electronic device to download application is received by the receiving means; and means for creating information relative to the individual data stored in the first portable electronic device and directing storage of this relative data in the second portable device is judged by the judging means as the second portable electronic device; wherein the reading of an application desired by a holder from the memory is executed when the set portable electronic device is judged by the judging means to be the first portable electronic device or when the data showing the completion of the storage of relative data in the second portable electronic device is received by the receiving means. As mentioned previously in the discussion related to claim 9, Ohki teaches away from this feature.

Yoneta does not remedy the deficiencies of claim 12 for at least similar reasons as provided above in claim 6. Therefore, the combination of Ohki and Yoneta cannot result in any way in the invention of claim 12.

Accordingly, reconsideration and withdrawal of the rejection of claims 6 and 12 under 35 U.S.C. §103(a) based on Ohki in view of Yoneta are respectfully requested.

The rejections having been addressed, Applicants request issuance of a notice of allowance indicating the allowability of all pending claims. If anything further is necessary to place the application in condition for allowance, Applicants requests that the Examiner contact Applicants' undersigned representative at the telephone number listed below.

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Respectfully submitted,
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